Civil indignation in Chile

Civil indignation in Chile. Recent collusion scandals in the retail industry.

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1. Introduction

The contradictions inherent in the relationship between democracy and capitalism have marked Chile's recent history. Waves of indignation over corruption and inequality have swept across the country's civil sphere, most markedly since the early 2000s. The discontent cuts across social and political divisions and is stimulated by the belief that the economic and political realms, incarnated in each realms' elites, feed each other in a vicious, exclusionary, circle. In the midst of the scandals involving economic behaviour discussed in this chapter Chileans have angrily spoken of "the business-state mafia". They have used the term to refer to the perceived relationships of cooperation and mutual protection between politicians and businesspeople. Collusion amongst economic actors, while taking place within the circumscribed field of the market, is seen as a sign of the incompetence, acquiescence, or direct collaboration of politicians and the state. From this perspective, the mutual support between corrupt members of the economic and political elites leaves little room for the mediation of the civil sphere and scant possibilities for democratic justice.

Jeffrey Alexander's *The Civil Sphere* (2006) (TCS) challenges the notion that democracy and capitalism are perfectly complementary. According to Civil Sphere

Theory (CST), democracy and capitalism may, in fact, be necessary to each other and constitute mutually "facilitating inputs" (Alexander 2006: 206). For example, consumption and production in industrial societies have given large numbers of people the chance to express their individuality and autonomy and develop forms of solidarity and trust that facilitate their participation in the civil sphere. At the same time, these economies generate serious obstacles for the project of the civil sphere by creating deep and persistent social and economic inequalities, poverty, and unemployment. (Alexander 2006: 206) The relationship between democracy and capitalism is one of inherent tension rather than full complementarity. Because of this tension and appealing to the discourse of the civil sphere, those affected by the kinds of economic misbehaviour discussed here can seek and obtain changes and reparation. They can puncture, if not destroy, the exclusionary circle formed by anti-civil actors in the market and the state.

This chapter applies CST to the empirical examination of two scandals in the retail industry in Chile and the civil reactions to them. The scandals involve the collusion among pharmacy chains and among tissue paper manufacturers to increase the retail prices of medications and tissue paper products. The analysis demonstrates how these scandals bring to light the structural tensions between democracy and capitalism and what civil actors and institutions can do about the injustices that become most apparent in such moments. In the language of CST, the analysis explores what opportunities present themselves for "civil repair", the capacity of oppressed groups "to advance claims to power and respect justified by their membership—no matter how partially realized—in the civil sphere" (Kivisto and Sciortino 2015:19; Alexander 2006: 208).

The approach adopted is sympathetic to Alexander's emphasis on culture vis-à-vis power and self-interest for the study of socio-cultural change (e.g. Thumala 2013; 2012; 2010; Thumala et. al. 2011). The analysis makes three main contributions. Firstly, it advances CST by exploring the boundary relationship between market society and the civil sphere, a relationship that is conceptualized but not empirically studied in TCS. The concept of "interstitial institution" is offered to further understand this relationship and constitutes a development of CST. The second contribution is around the applicability of CST beyond the U.S.A. One of the starting points of this study was the acknowledgment that the binaries in CST constitute a "historically contingent final vocabulary" (Rorty in Alexander 2006: 56), informed by the liberal ethos and specific history of the American civil sphere. The chapter shows that CST's binary codes for relationships, motives and institutions do apply in Chile. However, Chile's civil sphere displays features which are specific to the country. It exhibits universalistic features while mobilizing historically specific, socio-cultural content. Thirdly, the chapter offers a theoretical challenge to one influential conception of culture in Chile and Latin America. In their critique of "Northern" social science's limitations for understanding contemporary Latin America, Cousiño and Valenzuela (1994) have argued for the inclusion of sociability and culture as a third integration mechanism when studying complex, differentiated societies. To the two predominant models, i.e. institutional integration of the rational and reflexive kind, and systemic integration, should be added a third, the experiential dimension of persons involved in interactions of the type typical of the family, love, commensality and religion, which are pre-reflexive and based on co-presence and reciprocity (Cousiño y Valenzuela 1994:178). The three models of social integration that they identify, presence (culture), conscience (institutions) and communications (system)

are seen as having their own logic but operating simultaneously in complex societies. Based on this framework they understand phenomena such as Latin American populism as the transfer of the model of personal relations of a signorial/patrimonial kind, typical of the *hacienda*, to the public sphere in urbanised, large scale societies in the figure of the paternalist and charismatic politician.

Unlike the approaches that Cousiño and Valenzuela critique as one dimensional and reductionist, CST seeks to move beyond classic Enlightenment and functional/structural understandings of civil life and pays special attention to shared moral ties and cultural codes (Alexander 2006:45-47). In this sense, CST is apt for the study of democratic life in a society where institutional and systemic integration coexist with cultural integration. Insofar as cultural communication operates through binary codes, CST is an appropriate framework for the study of Chile's civil sphere when the latter is understood from a cultural perspective and studied through the observation of norms, codes, and narrative structures. This could be seen as a methodological match.

Substantively, there is also an important degree of overlap between CST's and Chile's historically developed codes, -after all Chile's republican tradition owes much to the French tradition, for example. At the same time, Chile's civil sphere and its citizens' commitments and "habits of the heart", the content of the cultural structure, displays some specific codes and motives that are peculiar to Chile and to Latin America. Among these are the cultural predispositions informed by Catholic *caritas* and personalism, the latter especially identified by Cousiño and Valenzuela as a key feature of the local culture. But this is where the analysis offered here departs from

theirs. Challenging their more narrow definition of culture, generally, and of Chile's culture in particular, the argument offered is that the specific elements of this culture are not only characteristic of face to face interaction in the realms of family and religion. Instead, these features circulate across all institutions and systems and inform a solidaristic, shared sense of civil behaviour that, in turn, triggers the scandals discussed and lead to civil repair. Indeed, against Cousiño and Valenzuela's conceptualisation of culture as primordially particularistic, the analysis shows that Chilean culture has universalising and critical elements. This is not to deny the importance of personalism and the codes specific to Chile but rather to highlight their generalised operation across the three social integration mechanisms.

Rather than abstract, CST's universalism is "anchored" in people's "everyday life worlds" (Alexander 2006: 49). The cases discussed embody clashes between the justifications of Chilean capitalism by reference to competition, economic growth, equality of opportunities, and individual wellbeing (Boltanski and Chiapello 2005) on one hand, and citizens' everyday experiences of inequality and injustice, on the other. Several aspects testify to the discontent generated by these clashes. Protests in Chile have increased since 2000 –both in number of participants and events- normally without links to political parties or other formal organisations, mostly displaying particular interest agendas (Somma 2015; PNUD 2015) and relying heavily on digital and social media (Valenzuela et. al. 2012; Somma and Bargsted 2015).[1] The nature of

[1] According to a recent market research study 95% of the population own a mobile phone, 71% have access to the internet at home and 65% own a personal computer. In terms of social media use, 82% use whatsapp, 76% facebook and 30% twitter (Cadem 2016).

these mobilizations and the growth of the not-for profit sector (Irarrázaval et.al. 2006) are significant in the context of an elitist and technocratic model of democracy (Delamaza et. al. 2012; Delamaza 2010; Silva 2006; Subirats 2005); an "authoritarian political culture" (e.g. Bengoa 1996; Gongora 2003; Salazar 2006); and the absence of a "reading culture" (Griswold 2005) and of a plural and sufficiently autonomous media system (although there are some signs of improvement, see Universidad Alberto Hurtado, 2016). The growth in levels of education and income over the last decades as well as the consolidation of the democratic regime have increased citizens' expectations, sense of entitlement, and dissatisfaction. The "master frame" (Snow et al 1986) in which protests are taking place include problems such as economic inequality, the negative impact of markets on the environment and society, and the abuse of the population by the powerful (Somma y Medel 2015).

The discussion is based on the analysis of a sample of press articles, opinion pieces and comments by the public (in the press and other open access digital platforms), as well as opinion polls. For the pharmacies scandal the period covered is March-December 2009. A search of the national press was done using the data base "Access Latin America", available through the University of Edinburgh library. For Chile the data base covers all published material in two sources, the right wing newspaper *El Mercurio* and UPI Chilean Spanish News Service. Searches for the terms "*colusión farmacias*" and "*protestas farmacias*" yielded 340 articles. A sample of 50 articles were chosen that contained descriptions of the legal process, comments by key actors, and reactions by the general public with explicit references to discussions of value (e.g. judgements about ideals and goods exercised, threatened or damaged). To this sample were added the results of Google searches using the same terms to cover other

online sources not included in the "Access Latin America" data base: e.g. *El Mostrador* (a left of center online newspaper), *La Tercera*, *La Nacion*, *The Clinic* (a satirical left of center political publication), Youtube, national radios, and regional newspapers. A further 30 articles were sampled from these sources using the same criteria. The period covered for case of the tissue paper is October 2015-May 2016. Searches in the "Access Latin America" data base for terms "*colusión confort*"[2], "*cartel confort*" and "CMPC" yielded 267 articles out of which 40 were selected following the same criteria mentioned above. A further 20 articles from online sources not covered by the database were added. Comments in social media are included when processed or covered by the press, except for Youtube. The data analysis proceeded in two stages. The general CST categories of regulative and communicative institutions and civic action and discourse were used first to classify the articles/pieces. In a second stage codes for motives, relationships and institutions, were identified, including those that match those proposed in CST and those specific to Chile's civil sphere.

1. Working concepts: brief (and selective) introduction to Civil Sphere Theory

The civil sphere is an autonomous, differentiated, social sphere of solidarity sustained by the belief in the existence and significance of a common membership (Alexander 2006: 4). "Although always experienced in specific, situational, institutional practices and social performances, it is nevertheless rooted in deep, and often unacknowledged,

[2] Although originally the name of a popular brand, "*confort*" is now used as a generic name to refer to all toilet paper.

cultural structures." (Kivisto and Sciortino 2015:16). The cultural structure of the civil sphere is semiotic and is organized around the distinction pure/polluted, which is used by actors to describe those they deem worthy of membership in a political community and those who they deem unworthy. The binary discourse occurs at three levels: motives, relationships and institutions. The codes for civil and anti-civil motives include active/passive, autonomous/dependent, rational/irrational. The codes for relationships include open/secretive, trusting/suspicious, and altruistic/greedy. Finally, the codes for institutions include rule regulated/arbitrary, inclusive/exclusive, equality/hierarchy. (Alexander 2006: 56-59). The language of pollution and purity and the codes listed above are mobilized in civil society to justify the inclusion and exclusion of self and others in the political community. In addition to a cultural structure the civil sphere is also made of communicative and regulative institutions that mediate between the discourse of the civil sphere and the pragmatic considerations of daily life. The mass media, polling agencies and voluntary associations are communicative institutions. Elective offices and the courts are regulative institutions. (Kivisto and Sciortino 2015)

The civil sphere is distinct from the economy, polity, religion and the family but the concerns and interests of each of these non-civil spheres can be translated into civil discourse by reference to the significance of the issue to common membership. Successful social movements have carried out this translation with the aim of civil repair. There are three ideal-typical ways in which the boundaries between the civil and uncivil spheres are conceptualised and conceived historically: "in terms of facilitating input, destructive intrusion, and civil repair" (Alexander 2006: 205) As was mentioned earlier, the relationship between markets and civil society can involve

all three. This chapter demonstrates that the boundary relationship between market and civil society in Chile has been characterised by destructive intrusion but also by civil repair.

2. The background: A wave of indignation that illuminates the civil sphere

The two cases discussed below are part of a long series of scandals that have stirred public discussion and civic mobilization over the past years. These have involved price-fixing and other illegal practices in the industries of essential commodities and services, such as department store credit cards, bus tickets, and the chicken meat sold by large supermarket chains. In addition to these cases there have been other serious breaches in the financial and political sectors, some of them involving use of insider information and illegal financing of political campaigns across political parties.[3] In the religious sphere, clerical abuse scandals have severely impacted upon the reputation and credibility of a Catholic Church that was widely respected for its defense of human rights during the military dictatorship of Augusto Pinochet (1973-1989). The staunch defense and financial backing of the abusers by business and political figures has muddled the waters even further. Chile represents itself and is

[3] Three important cases are CAVAL, involving the son of President Michelle Bachelet, accused of using her influence to secure a loan for a real estate business deal; PENTA, a tax fraud case related to the financing of election campaigns; and SOQUIMICH, about invoices linking unsupported payments to finance politicians using public money.

recognized as having comparatively low levels of corruption (Transparency International, 2014). Furthermore, the narrative that the marriage between democracy and a market economy leads to the good life has been overall successful. In this context, the breaking of the cultural codes of free competition and of the moral use of religious and political power produces indignation. The scandals in the retail and financial industry, in particular, fuel a growing malaise about the market economy, the so-called "model" and the social inequality it has bread, and contribute to already low levels of trust in all institutions (Segovia 2015; Segovia and Gamboa 2012) and private businesses in particular (Cadem/Horizontal/UAI, 2015; Flores y Rodríguez 2013; Ossandon and Tironi 2013; SOFOFA/Cadem 2016). In addition to questions about the strength of Chile's democratic institutions the moral character of politicians and business leaders appears seriously polluted. A review of reactions by the public as presented by the media over the years include references to "shamelessness", "theft", "monopolies" and "mafias" that operate "against the people"; a sticky web of "abuse", which cannot be easily dismantled in the face of conspiratorial power. The discourses that codify the events produced in the context of these structures of feeling are, therefore, especially suited for an examination of the various civic ideals Chileans adhere to.

The collusion scandals analysed here broke as a result of a regulative action by Chile's competitive practices regulator, which was then communicated by the press and that, in turn, lead to citizens' commentary and actions, including calls for consumer boycotts, street protests, and damages to stores, as well as a dip in public trust in institutions. The following sections go over the key events for each scandal in chronological order and as they developed in each of three levels, regulatory,

communicative and civic. The question of how the coding of events and the reactions to them have led to civil repair is addressed in the conclusions.

3. Case 1: Collusion among pharmacy chains

In April 2009 it was revealed that Chile's competitive practices regulator (*Fiscalía Nacional Económica*, FNE) had filed against three of the country's largest pharmacy chains *Farmacias Ahumada* (FASA), *Cruz Verde* and *Salcobrand*, (which between them controlled 90% of the market) for colluding to fix the prices of 222 medicines. The collusion resulted in increases of up to 300% in the price of medications including for serious chronic conditions such as epilepsy and diabetes. The collusion took place in the midst of an artificial 'price war' between the chains. In addition to the fixing of prices, the exploitative working conditions of pharmacy employees became salient. Given their low wages and the fact that their final salaries depend on each individual's sales, salespersons were incentivised to lead customers to purchase the most expensive version of drugs by offering them first or lying about available stock.

a. Legal actions: citizens' demands and the role of the FNE

The two main sets of legal actions put forward in response to the scandal are by public prosecutors and the governments' consumer protection agency. At first sight this would confirm the idea that Chile's civil sphere is weak and its citizens passive and reliant on the state. However, although they have not always been the main drivers, it is crucial that citizen and consumer organizations have joined in the suits

and been instrumental in communicating about the scandals and calling for civic actions, such as boycotts and street protests. In other words, some civil associations have been active rather than passive. But perhaps more importantly, from the point of view of CST, the fact that legal actions precede media reporting and civil actions can be seen as reflecting the relative weakness of Chile's communicative institutions (the press and civil associations) rather than the weakness of the civil sphere as a whole, which also contains regulative institutions, such as the FNE. Of course, the existence of legal responses in themselves do not point to the existence of a civil discourse. Corporatist/patrimonial/hacienda type of legal/political systems based on non-civil legitimation logics also have their own legal regulations. The argument of this chapter is that, unlike what has been observed for the cases of Brazil (Baiocchi 2008) or Colombia (Tognato 2011), these scandals and their various responses emerge clearly within Chile's civil sphere and its discursive structures. The discourse that sustains the regulatory actions, their social and political legitimacy fits squalrey within the country's liberal and republican traditions.

A brief examination of the role of the media is required before considering the regulatory responses to the scandals. The media face limitations when it comes to the investigation of economic misconduct. Although several other scandals, notably political ones, have been broken by the press and television following independent investigations based on public data transparency laws and open sources, the research into often complex economic malpractice is too costly for the media to undertake.[4]

[4] The information in this paragraph is based on personal communications with Eliana Rozas Professor of Journalism at the Faculty of Communications of the Catholic University of Chile, Paulette Desormeaux, also Professor of Journalism at the

The costs include not only those directly incurred in the monitoring of the behaviour of pricing structures, for example, but also from the potential loss of advertising revenue from affected companies.[5] A further limitation to proactive reporting of economic misconduct is posed by the legal restrictions on access to information in ongoing cases. Having said that, some television programs had been reporting on various consumer issues on the basis of the information provided by the national consumer protection agency SERNAC since the mid 2000s so that when these particular scandals broke, there had already been some public discussion of the treatment of consumers by companies. (E. Rozas; P. Desormeaux; C. Villavicencio 2016, personal communications, 19-21 October)

One key regulatory institution whose work the media have supported is SERNAC. The mission of SERNAC is to educate the public about their consumer rights and to mediate in conflicts between consumers and providers. SERNAC has been a major source of information for the reporting of consumer issues during the 2000s and contiunes to be. However, the more powerful FNE has gained increasing visiblity in light of the collusion cases.

The mission of the FNE as a "specialised public body" is "to defend and advocate for competition", "acting on behalf of public interest, safeguarding consumer welfare by

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Catholic University of Chile, and Claudio Villavicencio, who specialises in investigative journalism (19-21 October 2016).

[5] Desormeaux is less persuaded by the argument about the threat of a reduction in advertising revenue and thinks that instead the problem is one of access to information and the capacity to investigate in collusion cases.

preventing that agents with significant market power, either individually or jointly, limit economic freedom." (fne.gob.cl) The FNE is a regulatory institution of the civil sphere, even if it is located inside the state. It is an "interstitial insitution"; a border-crossing, regulatory institution located in three spheres: the state, the market and the civil sphere. (See also Tognato in this volume).

The FNE as an interstitial institution is a state agency aiming to regulate markets following the civil objective of "taming" Chilean capitalism for the benefit of the whole of society. The FNE's mandate and actions have been legitimised by and helped to strengthen Chile's civil sphere by initiating the repair of the damanges caused by the collusion cases.

Soon after the FNE filed their suit against the pharmacies with the Free Competition Court (*Tribunal de la Libre Competencia TLC)* in April 2009, the TLC reached an extrajudicial agreement with one of the chains, FASA. FASA had admitted in March to the collusion and agreed to compensate customers in exchange for an end to prosecution. On March 30th in response to the admission by FASA, a group of consumers, social organizations, and members of parliament brought a lawsuit for collusion against the three pharmacy chains (UPI 2009). FASA failed to compensate customers and Santiago's Appeal Court fined them for close to US$1 million. The other chains, *Salcobrand* and *Cruz Verde*, were fined for collusion in 2012 for the maximum amount allowed by law, US$ 19 million. The chains appealed to the Supreme Court but their appeal was rejected unanimously.

In a language that would become central to the debate among business people, politicians and citizens sympathetic towards the market economy, the decision by the Supreme Court judges described collusion as "one of the most serious violations of free competition". This, of course, goes against one of the key justificatory elements of Chile's market economy. Importantly, the judges also argued that in this case "economic interest was placed above human dignity, the life and health of persons." (*El Mostrador* 2012) This latter violation has been highlighted by all actors. The discourse is formulated in the language of rights and not of the personal dependency and reciprocity proper to a corporatist universe of relationships (Baiocchi 2008; Tognato 2011). The most adamant critics have been those opposing the consequences of privatization, weak unions and workers' rights, and the limited capacities of the state to ensure compliance with labour and consumer laws. One important issue for these critics is that the executives behind the collusion should have faced prison sentences. For this to happen, however, the charges would have to be formulated not only as infractions to free competition law but also as a violation of criminal law. To address this, free competition law was reformed. The modifications approved in August 30th, 2016, increase the fines, introduce penal sanctions, and give the FNE further powers, including that of overseeing mergers.

The second main set of legal actions includes the class action lawsuit against the three chains brought in 2013 by SERNAC. This on-going lawsuit, which seeks to obtain compensation for customers affected by the purchase of a list of 206 medications, was deemed admissible by Santiago's Appeal Court. SERNAC sees the decision by the court as a major breakthrough as "it is the first time in our country that a class action asking for compensation for damages incurred by anticompetitive behaviour is

admitted." (SERNAC 2013) In addition to the class action for collusion, SERNAC has been monitoring compliance with consumer rights law. In 2016 alone the agency had filed complaints against 39 pharmacies belonging to the chains involved in the initial scandal and a few others for breaking consumers' rights law including failures to display accurate information regarding prices or excessive charges. SERNAC are backing a modification to consumer law currently under discussion in Parliament that would give the agency powers beyond filing complaints, including auditing and applying sanctions. The project also includes increasing fines.

What these legal actions and their discursive legitimation shows is that unlike what has been observed in Brazil (Baiocchi 2008) there is no tension within Chile's civil sphere between competing corporatist and liberal codes. While at the level of personal interactions the patrimonial, personalistic culture based on the favour has not disappeared, the codes mobilized in these scandals, crucially formulated in the language of consumers rights and citizenship, are overwhelmingly about claims for the rule of law to be applied to every Chilean citizen regardless of their power or social position. Chileans no longer expect the powerful to concede them privileges or entitlements, which they know are already theirs.

b. Street protests: greed trumps respect for human life

News of the collusion lead to calls for consumer boycotts in social media, which were promptly communicated by the press, as well as to street protests, and damages to stores (*La Nación* 2009). At the end of March 2009 a series of protests took place outside and sometimes inside the pharmacies in various cities across the country. The press labelled these events as "citizens' protests" (*protestas ciudadanas*) and

"citizens' fury" (*furia ciudadana*), their rationality and the need for their restriction dependent on the level of violence incurred.

In keeping with a tradition that sees order as the supreme political value (Stuven 1997; Pinto 2008, Araujo and Beyer 2013) commentaries focused on the need to avoid vandalism and keep civic order (see Arteaga in this volume for a similar valuation of order in the case of Mexico). Belief in the legitimacy of limiting protest in order to preserve the normal running of everyday life is strong. Even when the public strongly support the cause behind a protest they equally strongly oppose disruptions and violence. (Cadem 2016) Yet, government representatives were sympathetic to the motives of the protesters in the pharmacy case. While calling for them to avoid violence and consider the safety of the workers inside the shops, the Interior Minister of the time, Patricio Rosende (of the left of center *Partido por la Democracia*, PPD) avoided polluting these actions by reference to irrationality or excitability. He was quoted as saying that the government understood that people were "upset". Rosende joined the protesters in framing the companies' leaders motives and their relations with consumers as anti-civic. In his view "what has happened here is not only unacceptable but also shameful, how a group of businesspeople do not stop at anything in their attempts to rob (*esquilmar*) consumers. The profit motive demonstrated by these businessmen is to be feared (*de temer)*." (UPI 2009) The references to theft, however, do not belong to the bandit code in operation in Colombia, whereby the rebellious bandit breaks away from the natural order of the diad *patrón/peon*, its dependence and reciprocity (Tognato 2011). What is invoked here is not the disruption of a harmonious organic social order but Chile's

civil discourse, which pollutes the breach of trust and signals its dangers to social coexistence.

Do these sympathetic reactions by politicians, which legitimise the public's anger mean that the elites have overcome long standing fears of "the masses" and a historical commitment to social order? This seems unlikely. What is more likely is that the risk of severe social unrest in Chile is not deemed high enough by those in power and that their sympathy is partly instrumental, a populist move to ingratiate themselves with a public fed up with the barrage of scandals. Besides, whenever the protests involved violence the police intervened. At the same time, a more interesting and complementary interpretation is that there is also genuine sympathy. The scandals revolve around the generalised (albeit varied) experience of consumption. This makes the particular demands of those interacting in the market much easier to relate to at an experiential level than other causes such as, for example, the plight of the indigenous peoples of Chile, and much easier to translate into the solidaristic terms of the discourse of the civil sphere. This idea is taken up again in the conclusions; but there is a further, even more essentially solidaristic element that adds urgency and legitimacy to the protesters' anger and that helps understand the politicians' public displays of empathy. The collusion amongst pharmacies threatens the physical integrity of consumers.

The narratives deployed by participants in the protests did not concern the threat to free competition that so worried the business community and that populate the editorials and letters to *El Mercurio*, but instead revolved around the sacredness of human life and its violation by greed. The term that summarises the transgression and

that has been a recurring trope in all subsequent scandals in the country is simply "abuse" (of power and privilege). In their conspiracy to fix prices for larger profits the leaders of these chains have shown their disregard for Chileans' physical integrity, especially among the poor. In Coyhaique in the south of the country the voluntary association Citizens Defense (*Agrupación Defensor Ciudadano de Aysen*) together with political candidates for the region produced a written declaration stating that they would not tolerate that companies "play with people's lives". In order to end the abuse they demanded that the prices of medications go down and that customers be compensated in order to "repair the damage caused." (El Divisadero 2009) In Santiago, the capital, the National Union of Municipal Workers (*Confederación Nacional de Funcionarios Municipales de la Salud, Confusam*) protested demanding exemplary actions against the chains and announcing that they would join the legal actions against the companies. The union rejected the "illegal profiting at the expense of the poorest in Chile and most importantly the fact that they have put patients' lives at risk. Unable to purchase essential medication to control their diseases they could suffer negative consequences, including death." (La Nacion 2009)

These reactions could be seen as invoking the breach of the expectation of protection/loyalty proper of the *patrón/peón* relationship. However, the increases in the awareness of rights among the population and their rejection of hierarchical forms of interaction (Araujo 2013) make this interpretation problematic. What is being invoked here is rather the solidaristic logic of Chile's civil sphere. At a street protest organized by a union of health professionals in Santiago (*Federación Nacional de Trabajadores Profesionales Universitarios de los Servicios de Salud*, Fenpruss) protesters presented access to medication as a common good by chanting "no to the

chains, no to corruption, medications are a good of the nation" (*no a las cadenas, no a la corrupción, el medicamento es un bien de la nación!*). An egalitarian claim was visible when those speaking at the rally demanded that the owners of the chains "show their faces" to the citizens ("*que den la cara*") instead of reaching a deal within closed doors at the Free Competition Tribunal (TLC); they wanted them to go to prison "as is the practice in other countries"; as well as real oversight to ensure that they are following the law rather than just doing it "on paper" *("fiscalización de verdad no en papel*"). (Fenprusstv 2009) All Chileans are entitled to equal treatment before the law.

c. Press and public opinion: evil actions by business and the government's failure to protect the people

From the point of view of the civil sphere, the collusion of the pharmacy chains represents mounting evidence of exclusion and power imbalances that the government and the elites are not willing or not able to resolve and that the citizens have only a limited capacity to address. As one young youtuber lamented on April 16th, 2009 the government did nothing to investigate and stop the collusion about which there had been accusations in the past (indeed in the mid-90s pharmacies were investigated for similar charges).

> "Collusion is one of the most vile and cowardly acts that can be perpetrated against the Chilean people. It is despicable that people are accumulating wealth on the basis of the misery of those who have to spend beyond their means to buy their medication…we cannot allow this to continue to happen and must not

> forgive the pharmacies that did this. We must stop buying from them and turn to neighbourhood pharmacies …we must tell the government that the Chilean people will not tolerate being humiliated anymore." (*Libera la vena contra las farmacias coludidas* 2009)

The theme of evil conduct by the pharmacies is even more strongly expressed by well- known journalist Tomas Mosciatti in CCN Chile in 2011. In a review of the process two years on he described the collusion as "a perversion that has no name." In his view, "this is perverse, we are talking about people's health here. Pensioners with low pensions, workers with low wages who were subject to this dictatorship of the pharmacies …a perversion that has no name." (Mosciatti 2011)

Also important in the theme of abuse is a sense of arbitrariness and injustice in the functioning of democratic institutions including the judicial system. The suspicion that the investigation of the pharmacy executives' behaviour would go unpunished or would be punished lightly is a recurring source of indignation. Mosciatti referred to the size of the fines facing the pharmacies as a "deficit in the law". The greater power of business to behave in an anti-civil manner even if legally emerges over and over in the comments about the fines in the press and social media. The fines were deemed scandalously low vis-à-vis the profits made, which were estimated at around US$67 million (*Emol* 2012) or between 2.8 and 4% of total sales in each year the prices were fixed (FNE 2009). According to the reactions on Twitter reported by newspaper *La Nacion*, the fact that the fines are low in comparison to the "multimillion profits" obtained by the companies adds to the fact that "the owners don't go to prison" and

that as result colluding is “perfect business for the business-state mafia”, “they pay the fine, pass it on to customers and then rub their hands in joy.” (*La Nacion* 2012)

The indignation has resulted in a decrease in the levels of trust in business, evident even in the recent survey commissioned by the business trade union *Sociedad de Fomento Fabril* SOFOFA. According to this study trust in pharmacies is among the lowest, located below casinos and just above tobacco companies. (SOFOFA/CADEM 2016)

d. The not so popular *farmacias populares*

The calls in social media to boycott the large pharmacy chains and buy from local drugstores instead, such as the one cited in the previous section, were followed by the creation of “popular pharmacies” (*farmacias populares*). These, however, were not grass roots developments of the cooperative type but conceived by a politician and backed by the government’s health infrastructure. Daniel Jadue (Communist Party) the mayor of *Recoleta*, a lower income *comuna* (municipal administrative sub-unit) in the capital set up the first “pharmacy of the people” in 2015 as a response to the fact that “health and medications are still a business” and to reclaim “the right to health” (Jadue 2016). The popular pharmacy provides medications at significantly lower prices by purchasing directly from pharmaceuticals and the government (Molina 2015). Several other *comunas* followed and in May of 2016 the Association of Popular Pharmacies (*Asociación Chilena de Farmacias Populares*) was created grouping 80 *comunas*. Jadue is the Association’s president but the opposition mayor of Puente Alto (a low-middle income *comuna*) Germán Codina (right wing party

Renovación Nacional) has also joined and called fellow opposition members to do the same "for the benefit of the population in order to start building a fairer country for all." (Emol 2016) On the other hand, the editorial of *El Mercurio* about the initiative claims that the medications may actually turn out to be more expensive but that mayors will not admit this during an electoral year. Following its well-known editorial line the main message of the piece is that what is needed is more deregulation and to allow supermarkets to sell over the counter medications as is common practice "in the majority of developed countries". It is well known, the piece concludes, that "increased competition favours the operation of markets" and by implication favours consumers (*El Mercurio*, 3 May 2016) This approach seeks to pollute the initiative as irrational, populist, and ineffective. And in this case, critics might well be right. However, what is important for our purposes is the fact that the appeal of the *farmacias populares* is also based on their association with justice and inclusion. Although their creation may be a cynical move, their existence stands on a civil scaffolding. Their creation is legitimised by reference to the needs and rights to health of all citizens. The poor's plight in this respect is that of all Chileans. The fact that these *farmacias* are not the work of civil associations but of an elected official does not diminish the strength of the civil discourse that has supported their creation and use. So when free marketeers argue against them in *El Mercurio* their claims can be polluted as lacking in solidarity and civility.

4. Case 2: "The toilet paper cartel"

In October 2015, the FNE confirmed that two forestry companies colluded for more than a decade to control the prices of toilet paper and other tissue paper products.

Between the years 2000 and at least December of 2011 Chilean forestry company *Compañía Manufacturera de Papeles y Cartones*, (CMPC) and PISA, a subsidiary of Swedish-owned SCA, the largest players in the market, coordinated to control prices. According to the FNE this is "one of the biggest collusion cases ever uncovered in the country." (*Bíobío Chile 2015)* Together the two companies hold about 90% of the tissue paper market share (which also includes kitchen towels, facial tissues and napkins) and their combined annual sales amount to approximately US$400 million. Prices increased by 34% (in the case of toilet paper) and 27% (in the case of paper napkins), above the Consumer Price Index average of 22.4% during the period under investigation (*Emol* 2015). The FNE asked Chile's antitrust court (*Tribunal de la Libre Competencia,* TDLC) to fine SCA $15.5 million. CMPC was not be fined in exchange for having admitted to anticompetitive conduct in March.

This particular scandal has had special impact upon the business sector because at its centre is Eliodoro Matte Larraín, former President of CMPC and whose family control the company. Matte is one of Chile's wealthiest and most influential businessmen. The history of the Matte family and its various branches, including the Alessandri, is connected to Chile's history in numerous ways, through politics, business, and education. The family's history illustrates the close links between political, economic and social power that prevailed in Chilean society particularly strongly until the 1960s (Stabili 1996). Alongside his lineage and business success, part of Matte's social standing derives from the creation and financing of the prestigious think tank *Centro de Estudios Publicos* CEP, a strong advocate of a free market economy. The revelations of anticompetitive practices in CMPC clashed loudly with his reputation as a champion of fair competition and corporate social

responsibility. Although he has defended himself, the damage to his reputation and of the entire business sector is serious. In an interview with *El Mercurio* Matte apologised "not only to the business community but especially to consumers and collaborators" (*El Mercurio* 1 November 2015). However, he claimed ignorance of the scheme and said he was deeply hurt by the deceit and betrayal of his long term and close subordinates and collaborators. Moreover, he set himself and his company apart by pointing out they carried out an internal investigation, fired those responsible and then self-reported the collusion to the FNE, although the FNE claim their investigation was prior to and the trigger for the company's inquiry. The business trade union *Sociedad de Fomento Fabril* SOFOFA suspended the company and Matte resigned from his roles as President of CEP in December of 2015 and of CMPC in March 2016.

Within the justificatory ideology of the market, e.g. free and fair competition, the self-interested and rational consumer, there are many elements that complement or coincide with civil sphere discourse. What is sginificant about Matte's situation is that the scandal did not only destroy his civil reputation but his economic authority too. He was expected to enact the values of freedom and independence, which are shared both by the market economy and the civil sphere. Hence, the impact of the revelations that implicated his company and his person. Even in a business world that tends to be hard-nosed and pragmatic, the desecration of Matte's figure was truly shocking.

a. Legal actions: Matte's civic move and the growing protagonism of the citizens

In order to avoid further legal actions against the company and as part of Matte's attempt to distinguish himself and his company from the rest, CMPC participated in a collective mediation with the government's consumer protection agency SERNAC and consumer associations Conadecus (*Corporación Nacional de Consumidores y Usuarios*) and Odecu (*Organización de Consumidores y Usuarios de Chile*). The mediation determined the amount (US$150 million) and mechanisms for compensation of customers (each consumer over 18 years old will receive cash directly). Conadecus' lawyer, Mario Bravo, has highlighted the novelty and significance of this negotiation: "it is the first time that consumer associations discuss compensation with a company" (*El Mercurio* 31 May 2016). The agreement reached in 2017 was described as "the most important deal in the history of free competition cases" by SERNAC's director Ernesto Muñoz (SERNAC 2017). Since the other company involved in the case, SCA, refused to participate, in April of 2016 SERNAC filed a class action lawsuit against them (SERNAC 2016). As with the pharmacy case, activists and the public have raised concern that the fines are not high enough to dissuade the retailers from continuing with their practices as well as disappointment that they will not face prison sentences.

Some conservative lawyers framed the executive's proposed reforms of competition law and the citizens' demands for making collusion a crime punishable by prison as inefficient, hysterical, ignorant, and fuelled by irresponsible populism. (*El Mercurio* 31 May 2015; *El Mercurio* 27 June 2015) Other lawyers claimed the objection to making collusion a crime simply "seeks to differentiate between common crime and white collar crime" to benefit those who commit the latter and who are normally more powerful (*El Mercurio* 23 May 2016). The fact that there are at present opposing

views circulating not only in the press but also in social media signals the potential for change in Chile's elite's historical deep mistrust and exclusion of the "popular sectors" (*sectores populares*), justified on account of their lack of basic civic virtues and their "barbarization" (Bengoa 1996; Moulian 2006; Pinto 2011; Salazar 2006; Araujo and Beyer 2013). For the purposes of determining entitlement to speak in the public sphere, the "popular sectors" can be seen to include not only the poorest but also the lay or non-expert citizens who are today making their views heard using social media and social movements. Companies are being forced to listen or appear to be listening to consumers' civic concerns, as is evident in the growing importance of CSR (Thumala 2013; Ossandon and Tironi 2013) and recent interest in the notion of "civic brands" (*marcas ciudadanas*). From the latter perspective the right response to the growth of an educated middle class and the crisis of trust in power is the end of the "vertical relationship" between brands and their consumer/citizens. (Cadem 2016)

b. Consumer boycotts as symbolic actions

Calls for a boycott of CMPC and SCA brands of toilet paper were successful in October as consumers switched to the few brands not involved in the scandal (Emol 3 November 2015). This particular action would then lead to a more general boycott of supermarkets after a new case of collusion involving supermarkets broke out in December. [6]

[6] The new case involved producers of chicken *Agrosuper, Ariztía* and *Don Pollo* and large supermarket chains Cencosud (*Jumbo, Santa Isabel*), Walmart (*Líder, Ekono*) and SMU (*Unimarc, Supermercados del Sur*).

In January 2016, consumer and citizen associations (including a newly created Citizens Front Against Collusion, Conadecus and the movement *Aquí la Gente*) called for boycotts of the supermarkets across the country using the hashtag #SupermercadosVacios. According to the representative of the organisation *Aquí la Gente* "citizens are mobilizing, consumers are fed up of so much abuse." In the words of the President of Conadecus "It is a true rebellion against the abuse and lack of ethics. The lack of principles of businesspeople does not surprise us anymore and the power of consumers who unite can be disastrous for them" (ADN Radio January 1 2016). On January 10th and 31st and February 28th of 2016 the press and social media displayed images of empty supermarkets and comments by consumers who in very calm ways discussed the boycott as the "exercise of citizenship", as a way of showing that "we will not be pushed over" and a way of "raising awareness" and possibly making supermarkets sell at "reasonable prices". Some pointed out the boycott was "an action effective at a symbolic level; important because citizens are having their voice heard and are taking a stance against injustice" even though "the financial loss to the supermarkets will not be too significant" (El ciudadano 10/01/2016). Yet, a financial newspaper reported that according to figures provided by the industry, sales had gone down on the day of the boycott of 31st of January between 5-10% (*Diario Financiero* 2016).

c. Public opinion: mistrust and ridicule

The tissue paper scandal contributed to further increase public mistrust of business. A public opinion poll conducted in early November 2015 showed that 90% of consumers believe large private companies take advantage of consumers (in Spanish *abusan*) and that this is a regular practice (89%). Half of them boycotted the tissue paper brands involved in the scandal (Cadem/Horizontal/UAI, 2015). The ideas that

members of the different elites are conspiring against ordinary Chileans and that this is chipping away at the legitimacy of traditionally hierarchical social relations is nicely expressed in a commercial by mobile phone company Wom. The ad, which appeared a few months after the tissue paper scandal broke, mocks Eliodoro Matte and Fernando Karadima, a well-known Catholic priest accused of sexual abuse, whose legal defence Matte and his family are thought to have partly financed. Playing with the Spanish word for W.C. the ad calls the businessman *Inodoro* Matte and shows both men sitting in what at first appears to be a confessionary but turns out to be public toilets and sharing a roll of toilet paper. (AND radio.cl 21 January 2016) The ad is significant because it performs a civil critique of the abuse of power. Previously reverent broadcasters and ad agencies can now easily mock and humiliate Matte and Karadima, both as individuals and as representatives of the powerful institutions of the Church and business, by drawing on and further legitimating civil widespread indignation. The ad is also significant because it enacts the idea of the collaboration and intimate relationship between members of two different elites that are seen as one and the same and especially threatening to democratic justice.

d. Farmers' markets and consumer cooperatives: market initiatives with civic consequences

A series of initiatives by consumers and small producers have sought to gain autonomy vis-à-vis large retail companies. Organisations like "Let's Buy Together" (*Juntos compremos*), *Huellas Verdes*, *Kulko*, *La Canasta Peñalolén* purchase collectively to secure lower prices or allow small producers to sell directly to consumers. Their motivations include the need for fairness, anger at the increase in

and fixing of prices by supermarkets and the mistreatment of providers, as well as a commitment to organic and sustainable production and a healthier lifestyle. These projects see themselves as alternatives to the abuse, to "fool a system that has made a fool of everyone." The cooperative *Juntos compremos,* in particular, say in their promotional video "we practice rebellious consumption" for a fairer and more sustainable consumption. (*Almacén Cooperativo Juntos Compremos* 2016)

Insofar as these actions are meant to facilitate access to goods by rational consumers seeking lower prices and better quality, they must be seen as coming from within the market. They are not civil associations in the sense of having aims outside themselves and a communicative intent (Alexander 2006: 98-99) although they could become civil associations. However, the fact that these initiatives are situated within the market should not obscure the fact that they are based on a market ethic; a discourse of fairness and sustainability (the latter currently framed as profitable and not just impacting on brand reputation). The ethical discourse around production, distribution and consumption that sustains many of these cooperatives is parallel and complementary to the civil sphere discourse. At the same time, these initiatives also mobilise the civil codes of altruism, equality, solidarity, openness, and trust and can be seen as proto-civil movements. The boundary exchanges between the market and the civil sphere have involved destructive intrusions but these intrusions have triggered interactions and social forms such as those within cooperatives of consumers and consumer associations (e.g. sociability, knowledge exchange, political engagement) that have positive outcomes because they enlarge the civil sphere; they produce a "more ample civil life" (Alexander 2006: 206).

Conclusions

"Corruption and inequality permeate real civil societies, but their continuous exposure, and the scandals they give rise to, testify to the structured insistence that there must be a better, a more civil social world." (Alexander 2006:189) This chapter has described the ways in which citizens and institutions in Chile have responded to scandals in the retail industry. The narratives show serious concerns about destructive intrusions in the civil sphere by economic actors who conspire to take advantage of consumers' lack of information and relatively less power and to exclude them from the debates on account of their ignorance or irrationality. The use of polluting language, protests, boycotts, consumer organisations and legal actions are a signal of two main commitments: a. to the country's democratic institutions (the government and judicial system's regulatory capacities) and b. to the ideals of free competition, justice, the dignity of human life, and the right to protest, even when restricted by the value of social order. The responses also show a growing sense of empowerment among individuals willing to organise around single issues outside the system of institutional politics. All this resonates with observations of a growing sense of entitlement and expectations about inclusion in the civil sphere and a demand for more egalitarian relationships in Chile's society (PNUD 2004, Araujo 2013).

The framing of the events discussed in this chapter displays many of the codes of CST (e.g. rationality, openness, solidarity, the rule of law). Do these events constitute civil repair of the destructive intrusion of the market? Let us recapitulate on the main responses to the scandals. The colluding companies have been named and shamed; they have been forced to pay fines and unprecedented compensation to consumers; the emblematic CMPC has agreed to negotiate directly with consumers, again,

something without precedent in the country; companies have been faced with consumer boycotts, which have had both a financial and a (larger) reputational impact; consumers have organised to achieve alternative forms of production and consumption; the government has reformed competition law; and businesses have been forced to pay more attention to the publics' views. All these instances taken as a whole constitute civil repair.

The repair has taken symbolic and material form, sometimes simultaneously. At the material or structural level, the sanctions and changes in competition law are aimed at keeping the practice of collusion from actually happening again. Consumer organisations and cooperatives, while still a minority, have the potential to alter the ways the market for certain goods operate and to sustain further demands for better application of consumer law. At the symbolic level, the naming and shaming of companies, the widely publicised boycotts, the payment of fines, the venting of anger in the media, and the very fact that these companies are being investigated and found in breach by state institutions, all publicly and loudly perform the collective, civil rejection of the anti-civil behaviour of market actors; especially of emblematic actors like Matte, who, as a business leader with a reputation built upon committment to a "market society ethic", acted against the expectations set by his own normative, civic and economic, codes. His was a double infraction. The critiques of market behavior displayed in the collusion cases do not only come from outside the economic sphere but also from within.

The analysis of these cases shows that the boundary relations between the market and civil society can display a shift from destructive intrusion to civil repair and that in

that process “interstitial institutions” such as the FNE are key. The FNE, located in the state as well as in the market and civil society, has been crucial in acting on behalf of the state to defend the market values of free competition and fairness as well as the civil ideals of freedom and autonomy.

At the same time, those who are critical of the limitations of the legal processes against the colluding companies and their representatives, including the option of extrajudicial agreements that lead to more lenient punishments; who question the transparency of the negotiations between those accused and the Tribunal of Free Competition; and who dismiss the fines as ludricously low, are right to be skeptical. Motivated by the goal of profitability, companies will find new and better ways to improve their market position and concentrate resources by, for example, developing oligarchic pricing structures through sometimes secretive and highly aggressive (if not illegal) strategies. These strategies will not always be identified, prosecuted or punished. Furthermore, given that those who have been protesting in Chile recently are more likely to be the better educated (Castillo et al 2015) the problem of exclusion from citizen involvement and knowledge exchange remains. The civil sphere is a project and its instantiations imperfect.

And yet the market-critical responses discussed here are distinctly not class protests or, even less, examples of identity politics. Because everyone is a consumer of one kind or another those behind the mobilizations and actions against the pharmacies and tissue paper producers have had much less trouble establishing a solidaristic response among the public (than have, for example, those demanding recognition of the rights of LGBTQ citizens or the Mapuche people in the south of the country). Identification

with the status of "abused consumer" requires no translation. The ease of identification produced by these cases has permitted the expression of a more general and multifaceted dissatisfaction with the country's democracy and economic model. That some consumers have more resources than others and are, therefore, clearly worse affected by the fixing of prices than the rest is a fact that every consumer can relate to and actually contributes to the success of the anti-collusion discourse. In other words, civil repair may be easier to achieve when motivated by anti-civil economic behaviour.

In addition to the generalisability of the experience of the "abused consumer" there is also the fact that the civil code itself is highly generalized, which may indicate advances in, if not the recovery of, the country's democratic ethos after the dictatorship (1973-1989). Despite the strongly capitalist nature of Chile's economy, the symbolic structure of the civil sphere (including e.g. the binaries critical/deferential, truthful/deceitful) appears to be markedly autonomous from the discourse of the market (e.g. self-interest, competition, hierarchy) and from powerful economic elites and institutions. A generalised civil discourse can be easily and effectively applied to the behaviour of economic actors who have non-civil interests. Their actions can be publicly communicated as not simply non-civil (the goal of any business is to make money) but as anti-civil, destructive, and unjust (making money through illegal, anti-competitive means).

Finally, the analysis shows that the CST codes are not exclusive to the political tradition and social and cultural life of the U.S.A. The morally charged discourses that follow the revelations of collusion in Chile are organised around the binary

oppositions at the core of CST between greed and altruism, secrecy and openness, deceit and truthfullness, hierarchy and equality, rationality and irrationality (Alexander 2006: 57-59). The belief in the shared membership that sustains the civil sphere's discourse, interactions, and institutions is also present in Chile. However, the cases discussed also point to the operation of codes and motives that are specific to Chile (and perhaps also to other countries in Latin America). For example, the recurring expressions of concern for the impact of collusion practices upon the most vulnerable (the poor and the sick) invoke the generalizable Catholic virtue of *Caritas*, which transcends particularistic loyalties and serves to universalise the duty and will to love others in a large scale, complex society. To capture how codes inspired by *Caritas* travel across institutions the definition of culture needs to be widened beyond the realm of the family and religion (Valenzuela y Cousiño 1984).

It is significant that the anger is not expressed in the language of class conflict (only a minority are calling for a radical overturn of the economic system). The consistent use of the term abuse (rather than exploitation, with its more structural connotations) implies a direct personal relationship between abuser and abused, as in the case of sexual abuse or the abuse of animals. The idea of abuse suggests that the model of personal relations and its particularistic ethics extends beyond interactions in the family and with friends, to cover those at work and in the market. As a result, instead of the class struggle motif, the expectations of "good treatment" (*buen trato*) and respect travel across institutions and become generalised. Although personal interactions are important in every society, in Chile the cultural structure of the civil sphere incorporates the experiences of sociability and reciprocity and generalises them by converting them into the language of rights and concern for others. More research needs to be done to explore the boundary relationships between the civil

sphere and the non-civil spheres of the family, friendship and religion. Yet the present analysis demonstrates that the experience and meanings of abuse in the realm of consumption are apt to mobilise the civil institutions and codes of fairness and equality in Chile's civil sphere.

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